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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,057	01/25/2001	Loukritia Balkos	4754*39	5066

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EXAMINER

HECKENBERG JR, DONALD H

ART UNIT	PAPER NUMBER
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1722

12

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/769,057

Applicant(s)

BALKOS ET AL.

Examiner

Donald Heckenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-14 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-29 is/are allowed.
- 6) ☒ Claim(s) 1, 5-6, 8, 18-23, 30-33 is/are rejected.
- 7) ☒ Claim(s) 3-4, 7, 9-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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1. The following is a quotation of the first paragraph of 35

U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 18-23 and 30-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 18, 20, 30, and 31 recite that the handle and the flat panel are rotatable with respect to the mould. The only description of any rotating feature of the invention is at p. 7, lines 27-29, which mentions that the "mould can be rotated to provide a smooth, finger running peripheral surface." However, there is no description of a relative rotation between handle and flat panel with respect to the mold in the originally filed disclosure. Therefore this limitation is new matter.

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 8, 18, 21, and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Rogan (U.S. Pat. No. 4,765,029; previously of record).

Rogan discloses a patty-forming apparatus. The apparatus comprises a mold (1) having an opening therethrough (figure 2). As the mold is shown as a solid structure, it must inherently have a weight. The apparatus further comprises a carrying component (3) having a substantially flat panel and handle (4 and 5) affixed to the panel. The panel has a surface to contact the product to be pressed into a patty (figure 7). The handle is sized to pass through the opening to allow the mold to move along the handle (figure 2). The mold is positionable to overlies the panel to thereby facilitate the application of pressure to the product (figure 6). Rogan further discloses that the handle and flat panel may be rotated with respect to the mold member (see column 3, lines 3-21 describing how the plunger shaft may

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be inserted into the shaft 4 and moved until it engages one of the keyways 14A, 14B, or 14C).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered

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therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rogan in view of Klefbeck (U.S. Pat. No. 5,658,608; previously of record).

Rogan discloses the apparatus as described above. Rogan does not disclose the apparatus to be as such that the mold and the carrying component are formed of stainless steel.

Klefbeck teaches an apparatus for forming food patties which is made of stainless steel (column 5, lines 16-18).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the apparatus of Rogan as such to have made the apparatus from stainless steel because this is a suitable material for constructing a food patty forming apparatus as suggested by Klefbeck.

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9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rogan and Klefbeck as applied to claims 1, 5, 8, 18, 21, and 31-33 above, and further in view of Bodenstein (U.S. Pat. No. 996,449; previously of record).

Rogan and Klefbeck disclose the apparatus as described above. Rogan and Klefbeck do not disclose the apparatus to include a loop affixed to a free end of the handle.

Bodenstein discloses a food processing apparatus wherein the end of the handle piece (H) has a loop (J) to allow for gripping by the fingers (p. 1, lines 40-42).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the apparatus of Rogan and Klefbeck as such to have affixed a loop to the free end of the handle because this would have allowed the handle to be gripped by fingers, and thereby ease operation of the press as suggested by Klefbeck.

10. Applicant's arguments filed on March 3, 2003 have been considered, but are not persuasive.

Applicant argues that Rogan does not teach or suggest a mold defining a weight that is movable along the handle and positionable over the flat panel as recited in claims 1 & 8 of the instant application.

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Rogan teaches the structure as described above. The mold structure (1) disclosed by Rogan is a solid structure (see figure 1, and column 2, line 18 - column 3, line 2).

Accordingly, this structure must therefore have some weight. The claim language that Applicant asserts as to make asserts recites merely "a mould having an opening therethrough and defining a weight" (claim 1), and "a weight member" (claim 8). The mold, being a solid structure with weight, meets these claim limitations.

11. Claims 24-29 are allowed. See the reasons for indicating allowable subject matter in the previous Office Action.

12. Claims 19-20, 22-23, and 30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. See the reasons for indicating allowable subject matter in the previous Office Action.

13. Claims 3-4, 7, and 9-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base



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claim and any intervening claims. See the reasons for indicating allowable subject matter in the previous Office Action.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (703) 308-6371. The


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examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at (703) 308-0457. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 for responses to non-final action, and 703-872-9311 for responses to final actions. The unofficial fax phone number is (703) 305-3602.



Donald Heckenberg  
May 21, 2003



JAMES P. MACKEY  
PRIMARY EXAMINER  
5/23/03